



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2018-0379]**

**RIN 1625-AA00**

**Safety Zone; Upper Mississippi River, Mile Markers 179 to 180, St. Louis, MO**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

---

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Upper Mississippi River between mile markers 179 and 180, extending the entire width of the river. This action is necessary to provide for the safety of life and property on these navigable waters near the St. Louis Gateway Arch grounds during an air show practice and an air show/fireworks display. This temporary safety zone is necessary to protect persons and property from potential damage and safety hazards during the air show evolutions. Entry into the safety zone is prohibited unless authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

**DATES:** This rule is effective from noon on July 3, 2018 through 10:30 p.m. on July 4, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0379 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Sean Peterson, Chief of Prevention, U.S. Coast Guard; telephone 314-269-2332, email Sean.M.Peterson@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Upper Mississippi River
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
MM	Mile marker
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
UMR	Upper Mississippi River

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by July 3, 2018 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. The NPRM process would delay the establishment of the safety zone until after the event and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for

making this rule effective less than 30 days after publication in the *Federal Register*.

Delaying the effective date of the rule is contrary to the public interest as it would delay the safety measures necessary to respond to potential safety hazards associated with the air show evolutions.

The Fair St. Louis will be holding air shows and a fireworks display in the vicinity of the St. Louis Gateway Arch from mile marker (MM) 179 to MM 180 on the 4th of July. A practice session for the air shows will be held on July 3, 2018 from noon through 2 p.m. The air shows will take place on July 4, 2018 twice: between the hours of 12:30 p.m. through 2 p.m., and 6:45 p.m. through 8:15 p.m. The fireworks display will take place from 9 p.m. through 10 p.m. on July 4, 2018.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231. The purpose of this rule to provide for the safety of life and property during the air shows and the fireworks display. Over the years, there have been unfortunate instances of aircraft mishaps that involve crashing during performances at various air shows around the world. Occasionally, these incidents result in a wide area of scattered debris in the water that can damage property or cause significant injury or death to the public observing the air shows. The Captain of the Port Sector Upper Mississippi River (COTP) has determined that a safety zone is necessary to protect the general public from hazards associated with the aerobatic and high speed aerial flight demonstrations. In addition, potential hazards associated with firework displays include accidental discharge of fireworks, dangerous projectiles, and falling embers or other debris. The COTP has determined that a safety zone is necessary to protect the general public from hazards

associated with the fireworks display. The purpose of this rule is to ensure the safety of life and property on the navigable waters in the safety zone before, during, and after the air show practice, the air shows, and the fireworks display.

#### **IV. Discussion of the Rule**

This rule establishes a safety zone from noon on July 3, 2018 through 10:30 p.m. on July 4, 2018. It will be enforced during four separate periods, once on July 3, 2018 from noon through 2 p.m., and three times on July 4, 2018 from noon to 2 p.m., from 6:30 p.m. to 8:15 p.m., and from 8:30 p.m. to 10:30 p.m. The safety zone will cover all navigable waters between mile markers (MMs) 179 and 180, extending the entire width of the river, on the Upper Mississippi River (UMR) in St. Louis, MO. Entry of vessels or persons into this zone is prohibited unless authorized by the COTP or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign “PATCOM”. The COTP or a designated representative may be contacted on VHF-FM channel 13 or 16, or by phone at by telephone at 314-269-2332. All persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts a one-mile stretch of the UMR for a total of seven and a half hours. Moreover, the Coast Guard would issue a BNMs via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic

impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding these rules. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism,

if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-

4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting a total of seven and a half hours that will prohibit entry on a one-mile stretch of the UMR on July 3rd and 4th, 2018. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration is available in the docket where indicated under ADDRESSES.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0379 to read as follows:



§ 165.T08-0379 Safety Zone; Upper Mississippi River, mile markers 179 to 180, St. Louis, MO.

(a) Location. The following area is a safety zone: all navigable waters of the Upper Mississippi River between mile markers (MMs) 179 to 180, extending the entire width of the river, in St. Louis, MO.

(b) Effective period. This section is effective from noon on July 3, 2018 through 10:30 p.m. on July 4, 2018.

(c) Enforcement periods. This section will be enforced as follows:

(1) On July 3, 2018, from noon through 2 p.m.; and

(2) On July 4, 2018, from noon through 2 p.m.; from 6:30 p.m. through 8:15 p.m.; and from 8:30 p.m. through 10:30 p.m.

(d) Regulations. (1) Under the general safety zone regulations in § 165.23 of this part, entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign “PATCOM”. They may be contacted on VHF-FM channel 13 or 16, or by phone at by telephone at 314-269-2332.

(2) All persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(e) Informational broadcasts. The COTP or a designated representative will

inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: May 24, 2018

S. A. STOERMER,  
CAPTAIN, U.S. Coast Guard,  
Captain of the Port Sector Upper Mississippi.

[FR Doc. 2018-11768 Filed: 5/31/2018 8:45 am; Publication Date: 6/1/2018]